

STATE OF MICHIGAN
COURT OF APPEALS

MARTHA L. QUINN,

Plaintiff-Appellant,

v

DONALD O. QUINN,

Defendant-Appellee.

UNPUBLISHED

May 15, 2003

No. 238470

Oakland County Circuit Court

LC No. 00-642431-DM

Before: Talbot, P.J., and White and Murray, JJ.

PER CURIAM.

Plaintiff Martha L. Quinn appeals as of right from the trial court's entry of a judgment of divorce. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. Material Facts and Proceedings

Plaintiff filed for a divorce from her husband, defendant Donald O. Quinn, on September 22, 2000. Although the parties were able to resolve many of their property and all of their custody issues, a bench trial was necessary to determine the status of Comerica Bank stock inherited by plaintiff prior to the marriage. The only witness was plaintiff. During her testimony plaintiff established that in 1972 she inherited from her grandmother 150 shares of stock in Detroit Bank & Trust. Approximately one year later, plaintiff enrolled in the dividend reinvestment program whereby all dividends awarded on her stock shares would be reinvested towards the purchase of additional shares of Detroit Bank & Trust, now known as Comerica Bank. In 1980 the parties were married. At that time plaintiff held 185.676 shares of Comerica stock, with a stipulated value of \$4,874.00. Throughout the entire period of their marriage, all of the stock certificates were in plaintiff's name only, and aside from a one time sale of \$8,000 worth of stock to utilize towards the adoption of one of their two minor children in 1991, the stock was never utilized by plaintiff during the course of the marriage. Plaintiff additionally testified that when she did "receive" dividends (which were reinvested) on her shares of stock, that income was listed on plaintiff and defendant's joint income tax returns and that both plaintiff and defendant likely paid taxes on those dividends. Additionally, plaintiff admitted that both she and defendant paid the income tax on any capital gains realized when she sold \$8,000 worth of

shares in 1991.¹ The parties stipulated that at the time of trial plaintiff held 2,871.89 shares valued at \$165,095.34.

At the conclusion of plaintiff's testimony, both plaintiff and defendant rested. The parties thereafter submitted to the trial court proposed findings of fact and conclusions of law. The trial court issued a written opinion and order on August 30, 2001. In that opinion and order, the trial court awarded plaintiff the 186.676 shares of Comerica stock which she owned immediately prior to the marriage. Additionally, the trial court concluded that both the total increase in value of the Comerica stock which occurred during the course of the marriage, and the increase in number of shares held by plaintiff, was marital property and subject to division. The trial court's reasoning in this regard was as follows:

Under *Reeves*, the court determines that the 186 shares owned by Plaintiff on the date of the marriage are plaintiff's separate property. The remaining 2,686 shares were purchased during the marriage with dividend income received during the marriage. These shares do not reflect a "passive" increase in value of the pre-marital stock shares. Rather, these are different stock shares purchased during the marriage.

Illustrated alternatively, had the parties elected to use the dividend income to purchase different stock, deposit in savings, or buy a new car, the asset acquired with the dividend income received during the marriage would be a marital asset. The parties' choice to reinvest the dividend income must be similarly analyzed.

Thus, the court finds that 2,686 shares of stock are marital property. The parties shall equally divide the marital stock.

We now turn to this sole issue on appeal.

II. Analysis

In *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002), we set forth the standard utilized in reviewing a trial court's findings in a divorce case:

In a divorce action, this Court's review of the trial court's factual findings is limited to clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 560 (1988). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Beason*, *supra* at 802; NW2d 207; *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court's findings of fact are upheld, we then must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks*, *supra* at 429; 566 NW2d 642. A dispositional ruling is discretionary and

¹ There was no testimony or other evidence presented establishing the amount of dividends awarded on the stocks during the marriage. There was also no evidence submitted establishing when and what type of stock splits plaintiff received on these shares.

should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Welling*, *supra* at 709-710; 592 NW2d 822; *Draggoo*, *supra* at 429-430; 566 NW2d 642.

Reeves v Reeves, 226 Mich App 490; 575 NW2d 1 (1997) contains our Court's most recent in-depth discussion of the "separate asset" concept. In *Reeves* we noted that the 'distribution of property in a divorce is controlled by statute, and that under the controlling statute a court "may divide all property that came 'to either party by reason of the marriage.'" *Id.* at 493, quoting MCL 552.19 (emphasis in original). "Thus, the trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Id.* at 493-494. "Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded." *McNamara*, *supra* at 183. In *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999) our Supreme Court held that "[n]ormally, property received by a married party as an inheritance, but kept separate from marital property, is deemed to be separate property not subject to distribution," citing *Lee v Lee*, 191 Mich App 73; 477 NW2d 429 (1991). There exists, however, two statutory exceptions to this rule. First, separate assets can be invaded if the remainder of the marital estate is not sufficient to provide support for the other spouse. MCL 552.23. Second, separate assets may be invaded if the trial court finds that the other spouse contributed to the acquisition, improvement or accumulation of the property. MCL 552.401.

In this case the trial court concluded that the approximately 186 shares plaintiff held at the time of marriage were her separate property, but that the increase in value in the shares since the marriage, as well as the increase in the number of shares, were marital property. The trial court reasoned that the increase in number of shares did not result from "passive" increases, because the dividends were used to *purchase* more stock shares. The court analogized a dividend reinvestment program with the *parties'* decision to utilize income to purchase any other type of asset during the marriage (new car, savings deposit, etc.). We believe this was in error.

The trial court correctly concluded that the 186 shares plaintiff held before the marriage were her separate property. However, it clearly erred by concluding that all of the increased value and increase in shares were marital because "the parties" chose to reinvest the dividends rather than use the income in some other manner. The undisputed evidence before the trial court established that *plaintiff* chose to continually reinvest the dividends in 1973, seven years before the parties married. There was no evidence to even remotely suggest that after the marriage plaintiff and defendant discussed what to do with the dividends received on plaintiff's inherited shares. Instead, the evidence revealed that plaintiff left her shares and the dividends alone throughout the marriage, allowing them to passively grow.² Thus, because plaintiff's shares

² We can imagine no more of a "passive" growth than in this case. Plaintiff had to do nothing during the marriage in order for this stock to increase in value and quantity. As at least one court has accurately stated, "[t]he income reflected in the dividend of a publicly traded security is the product of the company's performance, not the effort or contribution of either or both spouses." *Warner v Warner*, 807 A2d 607, 617 (Me, 2002). Moreover, "[a] stock split is not evidence that stock purchased prior to the marriage has been converted to marital property." *In re Marriage of Smith*, 265 Ill App 3d 249, 254; 638 NE2d 384, 388 (Ill App, 1994).

were inherited, and the increases resulted from passive growth, they were her separate asset. *Reeves, supra; Dart, supra; Lee, supra.*

Defendant argues that the trial court correctly found the increase in shares and value of the stock since the marriage were marital assets because he shared in paying the taxes on these dividends. First, this was not a basis for the trial court's ruling, so it is not properly before us. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Second, defendant's sharing in the income tax burden (in an unknown amount) for the dividend income is not sufficient to establish that defendant "contributed to the acquisition, improvement, or accumulation of the property" sufficient to invade this separate asset. MCL 552.401. Indeed, in *Grotelueschen v Grotelueschen*, 113 Mich App 395; 318 NW2d 227 (1982) we addressed virtually the same issue. In that case, the trial court determined that defendant's savings accounts containing inheritance defendant received from her mother's estate and death were separate property. On appeal plaintiff argued that the trial court should have found the accounts to be marital property since he paid the taxes on the interest earned on the savings accounts containing his wife's inheritance. This Court disagreed, holding that "[a]t best, the husband's contributions to the savings accounts in his wife's name were indirect and minor in nature." *Grotelueschen, supra* at 401. We find that to be the case here, particularly when defendant presented no evidence establishing the amount he contributed for the taxes. There is simply no competent evidence in the record to establish that defendant contributed in a meaningful way to the acquisition, improvement or accumulation of the stock. As such, MCL 552.401 does not allow defendant to invade plaintiff's separate estate.

We likewise reject defendant's argument that the one-time sale of \$8,000 in stock to fund the adoption turned the remaining funds into marital property. It is correct that the \$8,000 would constitute marital property subject to division, if it had been utilized for a material object, but it was not. However, this one-time use of the account over a twenty year marriage does not transform the remaining untouched stock into marital assets. We also note that the cases relied upon by defendant, and in particular *Darwish v Darwish*, 100 Mich App 758; 300 NW2d 399 (1980), *Ripley v Ripley*, 112 Mich App 219; 315 NW2d 576 (1982), and *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995), do not have any applicability in this case because those cases dealt with the purchase of retirement funds, pensions, or other such assets with a spouse's income earned from their employment during the marriage. See *Ripley, supra* at 230 (noting that contributions from a spouse's earnings during the marriage into a savings accounts requires a finding that savings account is a marital asset); *Darwish, supra* at 763 (contributions to husband's employer stock purchase plan during the marriage is marital property); *Hanaway, supra* at 293-294 (husband's business – inherited from his father – was marital asset because he actually managed business during the marriage). Unlike in those cases, in the instant case we have an inheritance passively held by plaintiff throughout the marriage and in which no earnings during the marriage were utilized to purchase more stock.

Reversed and remanded for proceeding consistent with this opinion.

/s/ Michael J. Talbot

/s/ Christopher M. Murray